

Idaho Criminal Justice Commission
Regular Meeting
July 30, 2021

Location: - [Zoom](#)

Time: 9 a.m.–11 p.m.

Idaho Criminal Justice Commission Members Present:

Eric Fredericksen, Chair, SAPD	Thomas Sullivan, Judge, Magistrate Court	Marianne King, Office of Drug Policy
Dan Hall, Vice Chair, Chiefs of Police Association	James Cawthon, Judge, District Court	Monty Prow, IDJC
Dave Jeppesen, Health & Welfare	Rafael Gonzalez, U.S. Attorney, District of Idaho	Josh Tewalt, Department of Correction
Grant Burgoyne, Senate Judiciary & Rules	Mark Kubinski, Idaho Attorney General's Office	Bernadette LaSarte, Public Member
Ashley Dowell, Comm of Pardons & Parole	Darren Simpson, Judge, District Court	Seth Grigg, Idaho Association of Counties
Kedrick Wills, Idaho State Police	Greg Chaney, House Jud & Rules Chairman	Eric Studebaker, Department of Education
Daniel Chadwick, Public Member	Denton Darrington, Public Member	

Comprising a quorum of Idaho Criminal Justice Commission (Commission)

Idaho Criminal Justice Commission Members Absent:

Kieran Donahue, Idaho Sheriffs Association	
Vacant, House Jud, Rules & Admin	Darrell Bolz, Public Defense Commission
Todd Lakey, Senate Judiciary & Rules Chairman	Sara Omundson, Idaho Supreme Court
Jared Larsen, Office of the Governor	Grant Loebs, Prosecuting Attorneys Assoc.

Others Present:

Kelli D Brassfield	Kathleen Elliott
Lymaris Ortiz Perez	Aditi Goel
David Carroll	
Kim Coster	Ben McGreevy
Erik Lehtnen	Sarah Fontaine
Lacey Coppage	Haley Allbee
Olivia Miller	Gloria Totoricajuena
Jason Pintler	Adam Jarvis
Jenifer Cichocki	Melinda Merrill

Agenda <i>Who's Responsible</i>		Meeting Outcomes/Decisions Reached	Due Date
9:00 am (10 min)	Call to Order– <i>Chair Eric Fredericksen</i> <ul style="list-style-type: none"> Welcome and Roll Call— <i>Chair Eric Fredericksen</i> Review Commission's Vision and Mission Statement and Values—<i>Commission Members</i> 		
	Commission Management		
9:10 am (20 min)	Action Item – Approve June 2021 Minutes <u>Subcommittee Reports</u> <ul style="list-style-type: none"> Human Trafficking Mental Health Research Alliance - Monty Prow Sex Offense MMIP 	There was a motion to approve the minutes from June 2021 by Ashely Dowell and was seconded by Seth Grigg. Motion carried. The Sex Offense subcommittee reviewed some spousal rape laws and will consider changes to keep offenders from circumventing laws. They also reviewed the SORNA report that states Idaho is not in compliance with their requirements.	
	Promote Well-Informed Policy Decisions		
9:30 am (30 min)	Public Defense – <i>David Carroll</i>	Goals: Brief history of the right to counsel, Idaho in the context of indigent defense reform in America, and Work still to be done. Gideon decision was not the first case to determine “right to counsel.” “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” “From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to ensure fair trials before impartial tribunals in which every defendant stands equal before the law.” Is this true from the very beginning? Yes, the courts have been appointing attorney to the very poor since before the U.S. was an independent country. Those that came from Europe had often been in the line of religious persecution and were not content to adopt the justice system of their mother countries. The people of the new America were suspicious the concentrated power in the hands of the few. An individual's right to liberty were self-evident and therefore, there needed to be a high judicial to allow the government to take away the liberty that the creator had given each individual. Even before the American Revolution the	

		<p>courts were appointing attorneys for the accused, and even before there were formal prosecutors. More than 300 years later the courts made the same decision that no one should have their rights taken away in the Gideon case.</p> <p>Liberty: protecting the individual against government overreach.</p> <p>Even before the constitution was ratified the Bill of Rights was created to specifically protect the right of individuals from the tyranny of big government. All people should be able to express unpopular opinions or choose one's own religion or pick up arms to protect one's home and family without the fear of retaliation from the state. No one's liberty can be taken away without due process. Countries formed an adversarial form of justice that consciously made it difficult for government to put someone in jail or prison. A jury made of everyday citizens, protections against self-incriminations, and the right to have a lawyer on one's behalf are all American ideals of justice that are enshrined in the first ten amendments to the United States Constitution and ratified by the states in 1791. Even before the constitution was ratified the federal courts were required to affirmatively appoint counsel to the indigent charged with capital crimes as enshrined in the 1790s Judiciary Act.</p> <p>Western states were the first to codify the right to counsel in all case types and to require payment of attorneys for their services. In the aftermath of the Civil War, a lot of soldiers went West encountering Native Americans and Mexicans all claiming right to the land and into that mix came the people of China working on the emerging railroad and the Ladder Day Saints. Basically no one trusted anyone. Anyone could charge anyone for anything.</p> <p>Right to council in Idaho predates statehood. Idaho revised its statutes in 1877 to include "If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him." Emphasis added.</p> <p>Gideon was important but as you can see most states already had the right to counsel. It is the states in the southeast that this really applies to as they didn't already have this enshrined. In almost every major 6th Amendment case comes</p>	
--	--	--	--

out of one of those southeast states. Gideon is also a 14th Amendment case. States are now required by the 14th Amendment to ensure the 6th Amendment case law is properly implemented and post Gideon there has been quite a few cases. Such cases in right to counsel also apply to direct appeals, delinquency proceedings, misdemeanors, misdemeanors with suspended sentences, and appeals challenging a sentence resulting from a guilty plea.

SCOTUS also delineated when an attorney must be present by defining critical stages during a criminal process. Highlight plea negotiations as a critical stage. Meaning prosecutors may never engage an uncounseled defendant unless a court has determined that a waiver of counsel has knowingly and intelligently been made. Other critical stages are pretrial, trials, sentencing, direct appeals, probation revocation proceedings, and parole revocation proceedings.

It is not just the right to counsel but the right to effective counsel. In U.S. v. Cronin “Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other right he may have.” Further, “The right to effective assistance of counsel is thus the right of the accused to require the prosecution’s case to survive the crucible of meaningful adversarial testing.... [I]f the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated.”

Cronin delineates what is required of states in creating an indigent defense structure. “[There are] certain circumstances where the structure is so deficient that any lawyer would fail to provide effective assistance of counsel.” The court highlights one case to show this. Powell v. Alabama where falsely accused of rape in Alabama. In this case the judge hand-picked the attorneys, the lawyers had insufficient time to prepare a defense, and the lawyers were unqualified to handle the complexity of the case. In short, the judge chose a real estate lawyer on the morning of the trial to represent all of the defendants at once.

Ten Principles

“The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.”

		<p>Four main parameters of the Cronin analysis: early appointment of counsel (principle 3), qualifications, training and resources of attorneys (principle 6 and 10), independence of the defense function (principle 1), and sufficiency of time (principles 4 and 5).</p> <p>Principle 3 (early appointment of counsel) comment: “Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.”</p> <p>How Idaho compares to other states: Idaho has made significant changes to the indigent defense system. Idaho passed the 14th Amendment responsibilities to the counties without any oversight or guidance and all trial level funding was a county function. In 2010, none of the counties visited/reviewed met the constitutional thresholds for independence, attorney qualifications and training, and time sufficiency due to case overload. They were determined to be ineffective.</p> <p>NLADA stated, “If it were possible to evaluate the overall health of a jurisdiction’s indigent defense system by a single criterion, the establishment of reasonable workload controls might be the most important benchmark of any effective system. Yet none of the studies counties have any workload controls in place.”</p> <p>For example, in Bonneville County the report found that a single attorney was assigned to maintain four attorney’s workload and minimal time per defendant.</p> <p>The PDC was created to give oversight and make sure there is effective and appropriate defense. In 2016, the PDC was given statutory authority to promulgate rules in seven primary areas: standards for providing effective right to counsel to indigent people including implementing and enforcing standards in all indigent systems and evaluating compliance with those standards. Training and education for public defenders to promote competency and consistency. Uniform data reporting requirements and model forms for counties to use annually report caseload, workload, and expenditures. Model contracts that counties can use to contract for the provision of services. And to comply with the PDC standards. Procedures and form for counties to apply for state grants</p>	
--	--	--	--

		<p>overseen and distributed by the commission. And procedures for administrative review in fair hearings. The PDC is required to make recommendations to the Idaho legislature each year for legislation needed on public defense issues from all the work that has been done.</p> <p>Idaho has been a model for other states to move forward in public defense. There are still six states on the list working to get into compliance.</p> <p>There has been a movement to relieve counties from burden of funding for indigent defense services across the country. The reason we want to move away from county funding is this funding is primarily derived by property taxes. The amount available for defender services tend to constrict in inverse proportion to the demand for those services. A weak economy will lead to more unemployment, worker flight, and more demand on other county services just a time you may see crime go up. So, as a result, the quality of a public defender representation that relies primarily on local funding generally fluctuates widely from locality to locality. Indeed, the counties most in need of services are those that are often least afforded the ability to provide effective services.</p> <p>Since 2010, more and more states are funding a greater amount for public defense services. Ohio and New York fund indigent defense services at 100%.</p> <p>Michigan Commission creates standards and counties must submit plan of how to meet those standards. If approve the state pays the difference between the current local costs and the costs of meeting standards. They are moving towards 100% state funding.</p> <p>When states desire to meet the standards, public defenders are more willing to work to meet the standards and are more effective and efficient. There are more public defender offices in Idaho now than there were in 2009.</p>	
--	--	--	--

		<p>Next steps</p> <p>Need to focus on tracking time. Only by tracking time we can ensure that public defenders have the proper time to proceed promptly in the calm spirit of regulated justice. Time tracking is the key to appropriate funding. Tracking time can see in real time the impact of policies decisions. You can see true costs.</p> <p>Prosecutors are often involved in providing counsel to county commissioners in civil matters. Seems like of a conflict of interest when they have to review contracts for public defenders. The vast majority take their oath of office seriously and try to not review objectively. They are trying to do right by the citizens. Try to have those in the prosecutor's office that review the contracts not be involved in criminal cases.</p>	
9:45 am (30 min)	Idaho Behavioral Health Council Update – <i>Sara Omundson, AOC; Dave Jeppesen, IDHW</i>	<p>Link to the strategic plan:</p> <p>The IBHC has three years for implementation of the 34 recommendations laid out in the strategic plan. The council has prioritized nine of the recommendations.</p> <p>Some of the recommendations are to work on comprehensive work force to make sure we have enough providers, improve the civil commitment process, the courts will lead on the intercept models (where services or interventions could have taken place), and develop and implement a crisis intervention for adults and youth. The 988-phone number will also be used.</p> <p>The council is shifting to implementation but they are not the only ones to work on implementation. The agencies that are engaged will be the ones to take the lead. The council will monitor progress and review any roadblocks.</p> <p>Is there a nexus between those that need mental health services and those that complete suicide? There is nexus there. The IBHC is trying to help that with this plan.</p> <p>Has the council looked at removing the bar in the civil commitment process for substance use? We can include it but we will be reviewing the whole process from top to bottom.</p>	

<p>10:15 am (25 min)</p>	<p>Annual Update – <i>Josh Tewalt, IDOC</i></p>	<p>Covid: Positive testing peaked in December. IDOC has administered over 40,000 tests. The number of positive cases is going down but like our communities there has been an increase recently. IDOC has great testing capacity. More than 65% of residents have been vaccinated. 45% of the staff have also been vaccinated.</p> <p>IDOC has worked with the state to create a covid risk assessment. They also use a status system of colors to show where the facilities in regards to covid. The ranges are from green (normal) to red (secure status). All facilities are in the yellow status except for IFCRC which is in the green status.</p> <p>Reopen activities: The facilities will restart centralized dining and programming. They will also reopen in person visiting, and allow volunteers on a case-by-case basis.</p> <p>Monitor and adjust: IDOC continues to evaluate risk, adjust strategies based on trends, and adjust plans to more/less restrictions as needed.</p> <p>IDOC's population has decreased by more than 1,000: There has been a reduction of 227 in probation and parole and a reduction of 1003 in the prison beds. During this time, even with the challenges, IDOC was able to process more riders in 2020 than 2019.</p> <p>There are 181 total CO vacancies statewide. IDOC has done well of maintaining staff up until recently and is now seeing an inability to hire. One barrier to hiring staff is wages. The average starting wage for our competitors is \$18/hour.</p> <p>Planning for the future: There is a new capacity proposal to include: A new female facility of 850 beds, a new ISCI unit with 280 beds, an ISCI annex remodel, and an ISCI Unit 7 refresh. This proposal allows IDOC to reclaim male beds by having proper infrastructure beds for females.</p> <p>Increased investment in community tools: IDOC has expanded GPS (fourfold increase in # of units statewide), added aCheck (facial recognition for check-ins), contracted urinalysis testing (statewide</p>	
------------------------------	---	--	--

		<p>contracts that remove barriers to UA testing), dosage probation (pilot project in D2, 5, 7, and parts of D1 and D6), opened connection and intervention stations (December 2020 in 4 regions, expanded to 7 in July 2021).</p> <p>IDOC funded 8 reentry Grants: The focus areas of these grants are: Crisis services, trauma interventions, forensic peers, reentry/day one (provide immediate reentry services to people exiting prison).</p> <p>The supervised population represents about 4% of total arrests. 188 arrests/month. The % is low for those that are arrested and actually end up supervised.</p> <p>Time at liberty for people on supervision has been increasing since 2018. There is high fluctuations from 2016-2018 and that was due to policy changes.</p>	
10:45 am (15 min)	Other ICJC Business – MOU and Strategic Plan Action Item	There was a motion by Dave Jeppesen to approve the strategic plan and Ashley Dowell seconded. Motion carried.	
11:00 am	Adjournment		

Next regularly scheduled meeting to be held in Boise, Friday, September 24, 2021

“Collaborating for a Safer Idaho”